

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

**MALIK AZ' RAE MOSBY,**

**Plaintiff,**

**-v-**

**9:06-CV-1165**

**DR. MARSHALL TRABOUT, et al.**

**Defendants.**

APPEARANCES:

MALIK AZ' RAE MOSBY  
Plaintiff, *Pro Se*

HARRIS, BEACH  
Russel E. Maines, Esq., of counsel  
P.O. Box 580  
119 East Seneca Street  
Ithaca, New York 14851-0580  
Attorney for Defendant Dr. Marshall Trabout

HON. JONATHAN WOOD, Tompkins County Attorney  
125 East Court Street  
Tompkins County Office Building  
Ithaca, New York 14850  
Attorney for Remaining Defendants

**Hon. Norman A. Mordue, Senior U.S. District Judge:**

**MEMORANDUM-DECISION AND ORDER**

Upon referral pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 72.3(c), United States Magistrate Judge Terèse Wiley Dancks issued a Report and Recommendation filed November 7, 2014 (Dkt. No. 168) recommending that the Court deny plaintiff's motion (Dkt. No. 139) for an order granting discovery and staying the action to enable plaintiff to pursue discovery against Dr. Trabout; grant defendant Dr. Trabout's motion for summary judgment (Dkt. No. 130); and deny

plaintiff's motion (Dkt. No. 161) to vacate the prior order granting summary judgment in favor of former defendant Dr. Bezerganian. Plaintiff objects (Dkt. No. 169) to Magistrate Judge Dancks's recommendations. Pursuant to 28 U.S.C. § 636(b)(1)(C), this Court reviews the Report and Recommendation *de novo*.

On *de novo* review of the record, including plaintiff's objection to the Report and Recommendation, the Court denies plaintiff's request for an opportunity for discovery to oppose Dr. Trabout's summary judgment motion, *see* Fed. R. Civ. P. 56(d), on the ground that the request is "based on speculation as to what potentially could be discovered." *National Union Fire Ins. Co. v. Stroh Cos.*, 265 F.3d 97, 117 (2d Cir. 2001) (citation and quotation marks omitted). Further, on *de novo* review, the Court agrees with Magistrate Judge Dancks that Dr. Trabout has demonstrated that he is entitled to summary judgment dismissing the claims against him on the ground that he was not deliberately indifferent to plaintiff's medical needs. Neither plaintiff's opposition nor his objection raise a material question of fact. Finally, on *de novo* review, the Court agrees that plaintiff's motion to vacate the order granting summary judgment in favor of former defendant Dr. Bezerganian lacks merit. The Court accepts the Report and Recommendation in its entirety.

It is therefore

ORDERED that the Report and Recommendation (Dkt. No. 168) is accepted; and it is further

ORDERED that plaintiff's motion (Dkt. No. 139) for an order granting discovery and staying the action is denied; and it is further

ORDERED that Dr. Trabout's motion for summary judgment (Dkt. No. 130) is granted;

and it is further

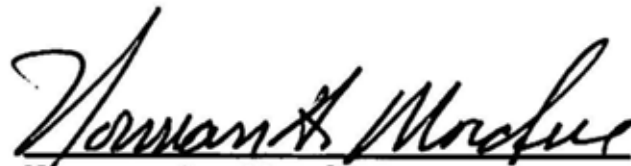
ORDERED that plaintiff's motion (Dkt. No. 161) to vacate the prior order granting summary judgment in favor of former defendant Dr. Bezerganian is denied; and it is further

ORDERED that the case is closed; and it is further

ORDERED that the Clerk of the Court is directed to serve copies of this Memorandum-Decision and Order in accordance with the Local Rules of the Northern District of New York.

IT IS SO ORDERED.

DATED: December 30, 2014  
Syracuse, New York

  
Norman A. Mordue  
Senior U.S. District Judge